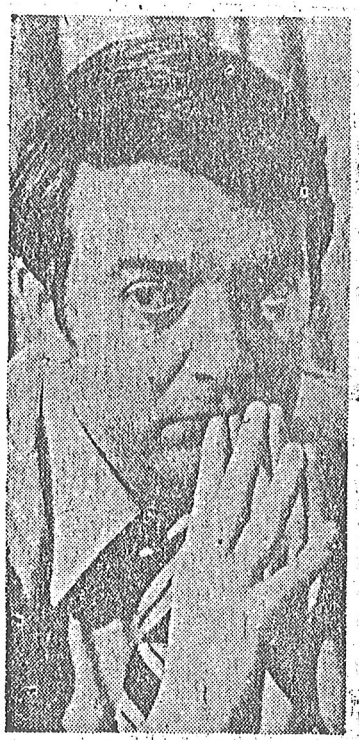
Marston Criticizes Internal Inquiry on His Removal



The New York Times

David W. Marston speaking to reporters in Washington yesterday.

By ANTHONY MARRO
Special to The New York Times

WASHINGTON, Jan. 25—David W. Marston, who was dismissed last week as United States Attorney in Philadelphia, said today that the question of whether obstruction of justice was involved in his removal was "a legitimate subject for investigation." But he said that the inquiry should be handled by the Federal Bureau of Investigation and a grand jury, not by Justice Department attorneys.

His remarks, which were made in response to questions after he gave a speech at the National Press Club here, came one day after the department's Office of Professional Responsibility issued a three-page report that cleared both President Carter and Attorney General Griffin B. Bell of any wrongdoing in the matter.

Specifically, the report concluded that on Nov. 4, when Representative Joshua Eilberg, Democrat of Pennsylvania, urged Mr. Carter to replace Mr. Marston, neither Mr. Carter nor Mr. Bell knew that the Congressman was a subject of one of Mr. Marston's investigations, which have focused on political and official corruption in Philadelphia.

President Carter has said that he asked Mr. Bell on Nov. 6 or 7 to "expedite" the replacement of Mr. Marston, a Republican, by a Democrat.

Although Mr. Marston stopped far short of accusing anyone of intentional attempts to obstruct justice, which is a felony, he said that he thought it was "wrong" to handle the investigation of the question as an internal matter, rather than a routine criminal case. Mr. Bell and other department officials gave the internal investigators sworn affidavits saying they had not known Mr. Eilberg was a subject of an investigation, and President Carter sent a letter to the same effect.

"I don't think an informal procedure, a short-cut procedure with affidavits, is going to satisfy anybody who knows the facts," Mr. Marston said.

Mr. Marston was sharply critical of the decision that led to his removal after a year of major successes in the prosecution of powerful figures in Pennsylvania, saying that it reaffirmed the need to isolate Federal prosecutors from partisan politics.

"When a President plays poker with Congress," he said, "I don't think the United States Attorneys should be one of the bargaining chips in the game."

Mr. Marston, whose boyish appearance makes him look much younger than his 35 years, said that he never considered himself essential to the success of the investigations being run by his office. He was concerned, he said, that if it appeared one Congressman could get rid of a local prosecutor with one telephone call to the President, no one would believe that prosecutors had a free hand to pursue corruption.

Department Defends Report

The Justice Department was quick today to take issue with Mr. Marston and to defend the integrity and value of the report by Michael E. Shaheen Jr., head of the professional responsibility office.

Robert Havel, a public information officer, said that it was proper to handle the matter through Mr. Shaheen's office rather than a grand jury because there had been no formal allegations of a crime.

"There were just intimations in the press," he said. He added that if Mr. Shaheen had found any reason to think a crime had been committed, the matter then would have been referred to the criminal division for further investigation.

The Shaheen report focused on the narrow issue of whether either Mr. Bell or Preident Carter was aware that Mr. Eilberg was under investigation when, at his request, they decided to "expedite" Mr. Marston's removal.

The report did not question, for example, whether they knew that the Democratic organization in Philadelphia, of which Mr. Eilberg is a ward leader and major official, was being damaged by Mr. Marston's investigations. Nor did it question the statements made by President Carter and Mr. Bell.

Mr. Bell, for example, said in his affidavit that he had not heard even press reports that Mr. Eilberg was a subject of an investigation until Jan. 10. The Philadelphia Inquirer had reported on the front page of its Jan. 8 issue that Mr. Eilberg was a subject of an investigation, and Mr. Marston has said that he reported frequently to the Justice Department staff about the case, beginning in November.

Likewise, President Carter said in his letter that he first heard about Mr. Eilberg's being a possible target of an investigation "a few minutes before" a news conference that was held on the afternoon of Jan. 12.

In that news conference, however, the President said in response to a question, "As far as any investigation of members of Congress, however, I am not familiar with that at all and it was never mentioned to me."

By the time of the news conference, reports of Mr. Marston's impending ouster and Mr. Eilberg's role in it had generated a major controversy in Philadelphia and had resulted in more than 1,500 telephone calls and telegrams to the White House, most of them protesting the removal.

Late today, the Justice Department released transcripts of all the affidavits obtained by Mr. Shaheen, in which Justice Department officials swore that what information they had concerning Mr. Eilberg, if any, had never been passed up to Mr. Bell.

Russell T. Baker Jr., an attorney in the criminal division, said that on Aug. 17, 1977, Alan M. Lieberman, an assistant to Mr. Marston, mentioned that their office had begun an investigation of "a transaction that might involve Congressman Eilberg." But he said that as he understood it, there was no evidence that Mr. Eilberg had committed a crime, and that he was not at that point "a target or even a subject of an investigation."

Mr. Baker said he passed this along to Benjamin R. Civiletti ,then the head of the criminal division.